APPENDIX A — ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT DATED AND FILED JULY 11, 2001

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 00-4151
(D. Ct. No. 97-CV-887-K)
(D. Utah)

MOUNTAIN WEST HELICOPTERS,
a Utah Limited Liability Company,

Plaintiff – Appellant,

v.

TEXTRON, INC., doing business as Textron Lycoming Overseas Corp., a Delaware corporation; ALLIEDSIGNAL, INC., a Delaware corporation,

Defendants – Appellees,

and

MCTURBINE, INC., a Texas corporation; PUEBLO AIRMOTIVE, INC., an Arizona corporation; GARLICK HELICOPTERS, INC., a Montana corporation; SCOTT PAPER, a Delaware corporation,

Defendants.

Appendix A

ORDER AND JUDGMENT*

Before **TACHA**, Chief Judge, **ANDERSON**, and **MURPHY**, Circuit Judges.

Appellant, Mountain West Helicopters, appeals the district court's grant of summary judgment in favor of Appellee, Textron, Inc.[1] We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

I.

On September 18, 1995, a military surplus UH-1L helicopter owned by Mountain West crashed near Grace, Idaho. At the time, Mountain West was operating the helicopter in Idaho in its logging operations. The helicopter's pilot, a Mountain West employee, was seriously injured in the crash. The helicopter was equipped with a T53-L-13B engine originally manufactured for the United States Army by Avco Corporation, the predecessor of Textron. The crash was caused by a loss of power in the engine that was in turn caused by the failure of the engine's centrifugal impeller.

Mountain West had purchased the helicopter, with the engine and centrifugal impeller already installed as

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

1. Appellee is variously referred to in this case as Textron, Inc. and AlliedSignal, Inc. For purposes of this order and judgment, we refer to the appellee as Textron, Inc.

components, from Scott Paper Company[2] approximately nine months before the accident. In 1990, while Scott Paper owned the helicopter, a replacement centrifugal impeller, also manufactured by Textron, had been installed. The replacement impeller was the impeller that later failed and caused the 1995 crash. Mountain West purchased the helicopter "as is" from Scott Paper. The purchase agreement clearly stated that all express or implied warranties were excluded.

Mountain West filed this lawsuit in Utah state court to recover the following economic losses it allegedly suffered as a result of the crash: (1) the value of the helicopter; (2) increased worker's compensation premiums allegedly incurred because of the crash; (3) increased aviation hull and liability insurance premiums allegedly incurred because of the crash; (4) a year's worth of insurance premium payed for the crashed helicopter; (5) penalties paid to contractors when Mountain West was unable to perform its logging obligations because of the crash; and (6) lost profits on contracts Mountain West was unable to complete because of the crash. Mountain West's suit sounded in tort and advanced a theory of strict product liability. Defendant Scott Paper removed the case to the United States District Court for the District of Utah pursuant to federal diversity jurisdiction. Textron filed for summary judgment arguing that purely economic damages are not recoverable in a products liability lawsuit under Idaho law. The district court agreed and granted summary judgment against Mountain West on all of its claims against Textron. This appeal followed.

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2. Scott Paper Company was also a defendant in the lawsuit filed by Mountain West, however; this appeal deals exclusively with Mountain West's claims against Textron.

II.

We review a "grant of summary judgment de novo applying the same standards used by the district court." *Byers v. City of Albuquerque*, 150 F.3d 1271, 1274 (10th Cir. 1998). Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

The question now on appeal is whether Mountain West can recover in tort for purely economic damages. The parties have stipulated that Idaho law applies to this dispute. Therefore, the limited question before us is whether, under Idaho law, Mountain West can recover in tort for purely economic damages. For substantially the same reasons given by the district court, we agree that Idaho law does not permit Mountain West to recover its alleged damages in tort.

Accordingly, the district court's grant of Appellee's motion for summary judgment is AFFIRMED. Mountain West has additionally moved to have the question certified to the Idaho Supreme Court. Further, Textron has moved to strike references made by Mountain West to any settlement between Textron and the helicopter's pilot. The motion to certify is DENIED and the motion to strike is GRANTED.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION DATED AUGUST 8, 2000 AND FILED AUGUST 9, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Case No. 2:97-CV-887K

MOUNTAIN WEST HELICOPTERS, LLC,

Plaintiff,

v.

TEXTRON, INC., et al.,

Defendants.

ORDER

This matter is before the court on defendant AlliedSignal/ Textron's ("Textron") Motion for Summary Judgment; defendant Scott Paper Company's Motion for Summary Judgment; Textron's Motion to Strike and Textron's Objection to Magistrate's Ruling. The matter came on for hearing on Monday, August 7, 2000. The plaintiff was represented by Mr. Robert S. Young. Defendant Textron was represented by Mr. J. Christian Moller and Mr. Tracy H. Fowler. Defendant Scott Paper Company was represented by Mr. Michael H. Hull. Oral argument was heard and the matter was taken under advisement. The court has considered all

pleadings, memoranda, and other materials submitted by the parties. The court has further considered the law and facts relevant to the parties' motions. Now being fully advised, the court enters the following order.

I. Background

Plaintiff, Mountain West Helicopter, is a Utah Limited Liability Company. It has sued Textron, Scott Paper Company and others for product liability damages arising out of the September 18, 1995 crash of a military surplus UH-1L helicopter near Grace, Idaho due to the failure, by fatigue cracking, of the engine's centrifugal impeller.[1] At the time of the crash, the helicopter was engaged in hauling logs, in support of a contract that plaintiff had to perform logging in a forest in Idaho. Textron has brought two motions for summary judgment. The first is on the issue of damages and the second is for partial summary judgment on plaintiff's claims for Failure to Warn. Scott Paper Company has joined in Textron's Motion for Summary Judgment regarding damages.

II. Discussion

Plaintiff's claims include several categories of damages including the value of the helicopter; the balance of the insurance premium for the remainder of the premium year; increases in its workers' compensation premiums; increases in its hull and aviation liability premiums; costs it allegedly

1. All other defendants in this matter have been dismissed previously.

had to pay because it could not complete the contract; and lost profits. In its Motion for Summary Judgment Textron argues that damages to the helicopter are "economic losses" and are not recoverable in product liability actions under applicable law, and that damages relating to insurance issues are too tenuous to be imputed to Textron.

This court agrees with the defendant that Idaho law applies in this action. The *Restatement (Second) of Conflict of Laws* § 147 states that:

> In an action for an injury to land or other tangible thing, the local law of the state where the injury occurred determines the rights and liabilities of the parties unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence, the thing and the parties, in which event the local law of the other state will be applied.

There is no other state that has a more significant relationship than Idaho to the subject matter of this case. The place where the injury occurred was clearly Idaho. The helicopter was in Idaho fulfilling a contract and had been working solely in Idaho for two months prior to the accident. Although the location of aviation crashes is frequently characterized as "fortuitous", that characterization is more properly applied to interstate flights. When an aircraft is used for a period of time within the border of a specific state, and then crashes in that state as is the case here, it is not fortuitous.

Textron argues that pursuant to Idaho law the plaintiff cannot recover economic losses in products liability cases.

In *East River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858 (1986), the Supreme Court denied recovery for economic loss in maritime case holding that: "Since all but the very simplest of machines have component parts, [a contrary] holding would eliminate the distinction between warranty and strict products liability." *Id.* at 867. The courts of Idaho, along with many other states, have extended this ruling holding in several contexts that claims for economic loss may not be pursued in a tort action. *See Ramerth v. Hart*, 983 P.2d 848 (Idaho, 1999) in which the Idaho Supreme Court held that an aircraft owner who sued a mechanic in negligence for damage to the aircraft's engine and airframe allegedly caused by the mechanic's improper repairs were "purely economic loss," for which no recovery could be had in tort.

Plaintiff argues that this matter falls into an exception to the general rule that purely economic loss cannot be recovered in tort. Specifically plaintiff argues that courts have recognized an exception when there is an actual injury that arises from the accident resulting in the economic loss. Plaintiff cites to *Duffin v. Idaho Crop Improvement Association*, 895 P.2d 1195 (Idaho 1995). However, *Duffin* states only in dicta that "economic loss is recoverable in tort as a loss parasitic to an injury to person or property". This is not the case at hand. Although the pilot of the helicopter was injured, the economic loss was not parasitic to the pilot's injury. The law is clear that economic loss is not recoverable in these circumstances and therefore Textron's Motion for Summary Judgment is granted as to the issue of economic loss.

Textron further argues that plaintiff cannot recover damages for increased insurance costs, lost premiums,

increases costs and lost profits. This court agrees. As for the lost premiums, the helicopter crashed shortly after the insurance premium for the year had been paid. Plaintiff argues that Textron is liable for the value of the remainder of the premium. The general rule in insurance law provides that an insured may not have any part of its premiums returned once the risk to the insurer attaches. Further, if plaintiff were entitled to a return of some percentage of its premium, that entitlement would be governed by its policy with the insurance carrier who is not a party to this action. Further, plaintiff cannot recover increased insurance costs including workers' compensation premiums in that the loss claimed is too remote to be charged to a third party tortfeaser. This same theory applies to plaintiff's claims regarding an increase in its hull insurance and aviation liability premiums following the accident. Increased premiums are simply too remote to be chargeable to third-party tortfeasers.

Lastly, this court grants summary judgment in favor of Textron as to the issue of increased costs and lost profits. There was not any contractual relationship between plaintiff and Textron and therefore these damages were not reasonably foreseeable. Further, plaintiff has not supplied any documentation to support its claims for lost profits.

Defendant Scott Paper Company has joined in Textron's Motion for Summary Judgment as to economic loss and insurance related damages. This motion is granted pursuant to the stipulation of the parties. The remaining issue regarding whether or not Scott Paper Company will be included on the special verdict form is moot in light of the court's ruling granting Textron's Motion for Summary Judgment. Further,

Textron's Motion for Summary Judgment as to Failure to Warn is also moot in light of the court's ruling. Lastly, Textron's Motion to strike plaintiff's expert report is denied as moot and Textron's Objection to the Magistrate's ruling on discovery issues is denied as moot.

Textron has further moved this court to strike plaintiff's discussion, in its briefs, of the settlement agreement between defendant and the pilot of the helicopter. This motion is granted pursuant to rule 408 of the Rules of Evidence.

For the reasons stated herein it is hereby

ORDERED that Textron's Motion for Summary Judgment regarding damages is GRANTED in its entirety. Textron's Motion for Partial Summary Judgment regarding Failure to Warn is now MOOT. Scott Paper Company's Motion for Summary Judgment regarding damages is also GRANTED in its entirety. Textron's Motion to Strike discussion of settlement agreement is GRANTED and its Motion to Strike expert reports is DENIED as MOOT. Lastly, Textron's Objection to Magistrate's Ruling is DENIED as MOOT.

This matter is DISMISSED with prejudice. Each party to bear its own costs.

DATED this 8th day of August, 2000.

s/ Dale A. Kimball
DALE A. KIMBALL
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED AUGUST 8, 2001

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 00-4151

MOUNTAIN WEST HELICOPTERS,
a Utah Limited Liability Company,

Plaintiff – Appellant,

v.

TEXTRON, INC., doing business as Textron Lycoming Overseas Corp., a Delaware corporation; ALLIEDSIGNAL, INC., a Delaware corporation,

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MCTURBINE, INC., a Texas corporation; PUEBLO AIRMOTIVE, INC., an Arizona corporation; GARLICK HELICOPTERS, INC., a Montana corporation; SCOTT PAPER, a Delaware corporation,

Defendants.

ORDER

Filed August 8, 2001

Appendix C

Before **TACHA**, Chief Judge, **ANDERSON**, and **MURPHY**, Circuit Judges.

Appellant's petition for rehearing en banc is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service as required by Fed. R. App. P. 35. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
PATRICK FISHER, Clerk of Court

by: s/ K. Fabrizio
Deputy Clerk